IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5080 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA Sd/-
and
Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

DEVJIBHAI VELABHAI

Versus

OFFICER ON SPECIAL DUTY NO.2

Appearance:

No one appears for the Petitioners

MR MUKESH PATEL AGP for Respondent

CORAM : MR.JUSTICE M.R.CALLA
and
MR.JUSTICE D.H.WAGHELA

Date of decision: 21/03/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.R.CALLA)

1. No one appears on behalf of the petitioners. Mr.Mukesh Patel, learned Assistant Government Pleader for the respondent. This matter is on Board since 12.3.2001 at No.3 for final hearing. Orders have already been passed in cases at No.1 and 2. The matter has been called out number of times but no one has appeared on behalf of the petitioners.

2. This petition is pending since 1987 and, in our opinion, the petition should no more remain pending because the counsel for the petitioners is not appearing. The petitioners, claiming to be the co-owners of the land bearing Survey No.18/1 admeasuring Hectare 2-96-43 Sq. Mtrs. (7 acres 12 gunthas) of village Sambalpur, have come with the case that the aforesaid land was acquired by the Gujarat Industrial Development Corporation (GIDC) for expansion of industrial estate at Sambalpur in Junagadh district. The petitioners had lodged their claim before the respodnent-Land Acquisition Officer and claimed compensation at the rate of Rs.40,000/- per Bigha. On 16.6.1986, the respondent gave a notice to each of the petitioners for passing the award under Section 11 on 7.7.1986. On the said date, i.e. 7.7.1986, the proceedings could not be taken up on account of demise of Shri Jagjivan Ram. Next date was fixed as 26.7.1986 and on this date the petitioners had appeared through one Shri Babubhai N.Thesia, Advocate as their power of attorney-holder and on that very day, the award was passed. The holder of the power of attorney signed the documents and, thus, on the basis of the consent agreement, the award was passed. A reference for apportionment was then made under Section 30 of the Act to the District Court at Junagadh which was registered as Reference No.62 of 1986. Yet, the petitioners feeling aggrieved that the award was inadequate, applied for a reference under Section 18 of the Act by making an application and made a request for reference under Section 18. The respondent refused to make the reference under Section 18 and passed the order dated 27.1.1987 and disposed of the matter accordingly stating that the award dated 26.7.1986 was a consent award under Section 11 (2) of the Act. Through this petition, the petitioners have challenged the order at Annexure-A and have sought a direction against respondent No.2 to make a reference under Section 18.

3. In this matter, Rule was issued on 5.12.1990. The respondents have filed their affidavits-in-reply on 24.1.1991 and 8.1.1996. In the affidavit-in-reply dated 24.1.1991, the Officer on Special Duty, GIDC, has stated

that in response to the Notice under Section 9 (3) and (4), the petitioners had appeared before the Officer on Special Duty and submitted that they had executed a consent agreement on 24.5.1982 with the GIDC, the acquiring body, and also agreed to accept the consent price of Rs.98,840/- per hectare and also mentioned that they had handed over possession of the land to GIDC on 24.5.1982. It has been then stated that on 26.7.1986 the petitioners were represented through advocate Mr.Babubhai N. Thesia as their power of attorney and he executed an agreement with the Land Acquisition Officer as prescribed under the Land Acquisition Act and agreed to the consent price of Rs.2,92,991.40 as the total amount of compensation inclusive of additional amount of interest and solatium as prescribed under Section 23 (1-A) and 23 (2). Accordingly, the consent award was passed and declared on 28.7.1986. It is, therefore, clear that in the facts of the present case, the consent award was passed under Section 11 (2) of the Act. It is further clear that possession was handed over on 24.5.1982 to the respondent-GIDC and, on the basis of the consent award, the compensation of Rs.2,92,991.40 inclusive of interest and solatium attained finality. Yet, a reference was sought under Section 18 to which the petitioners are clearly not entitled and the respondent was right in rejecting the request for reference and the petitioners cannot raise a grievance if the reference has been refused merely because they got the second thought of seeking a reference. It may also be stated that there has been some disputes among the co-sharers and, therefore, the respondent had made a reference under Section 30 for the purpose of apportionment of compensation amount and the petitioners were aware that there was a dispute going on between them before the Civil Court and that compensation was required to be apportioned in accordance with law. In the facts of the present case and in view of the pleadings of the parties and in view of the fact that it was a case of consent award, we do not find any merits in this case. This Special Civil Application has no substance. The same is hereby rejected. No order as to costs. Rule is hereby discharged.

Sd/-
(M.R.Calla, J.)

Sd/-

21.3.2001 (D.H.Waghela, J.)
(KMG Thilake)